

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
DTV Build-out)
)
Requests for Extension of the)
Digital Television Construction Deadline)
)
Noncommercial Educational Television Stations)
With May 1, 2003 Deadline)

ORDER

Adopted: March 10, 2005**Released: March 15, 2005**

By the Commission:

1. The Commission has before it 45 applications submitted by noncommercial educational television stations seeking extensions of the May 1, 2003, deadline for construction of their digital television (DTV) facilities pursuant to Section 73.624(d)(3)(iii) of the Commission's rules.¹ The applications are unopposed. For the reasons set forth below, we grant 43 of the applications and extend the DTV construction deadline for these stations to six months from the release date of this Order. We admonish 2 stations for their continuing failure to timely construct, deny their applications, and afford them six months from the release date of this Order to comply with the DTV construction rule. These stations will also be subject to the remedial measures for DTV construction we have previously adopted.²

I. BACKGROUND

2. To further the rapid implementation of a nationwide system of DTV, we adopted in 1997 an aggressive DTV construction schedule.³ We determined that television stations affiliated with the ABC, CBS, Fox, and NBC television networks would be required to build DTV facilities in the ten largest television markets by May 1, 1999. Stations affiliated with these networks in television markets eleven through thirty were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their stations by May 1, 2003.

¹ 47 C.F.R. § 73.624(d)(3)(iii). A complete list of stations is included in Appendix A.

² See Remedial Measures For Failure to Comply with Digital Television Construction Schedule, *Report and Order*, 18 FCC Rcd 7174 (2003) (*Remedial R&O*).

³ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1997) (*Fifth Report and Order*).

3. A total of 1,680 television stations in all markets (representing approximately 98% of all stations) have been granted a DTV construction permit or license. There are a total of 1,491 stations now on the air broadcasting a digital signal, 682 with licensed facilities or program test authority and 809 operating pursuant to special temporary authority ("STA") or experimental DTV authority.

4. In the top thirty television markets, all 119 network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and nine with STAs. In markets 1-10, of the 40 network affiliates due to be on the air by May 1, 1999, all are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11-30, all 79 network affiliate stations required to be on the air by November 1, 1999, are providing digital service. Seventy-two have constructed their licensed DTV facilities and seven are on the air with STAs.

5. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of March 7, 2005, 1,059 of these stations (86 percent) are broadcasting a digital signal. In addition, approximately 373 noncommercial educational television stations were required to commence digital operations by May 1, 2003. As of March 7, 2005, 313 (84 percent) of these stations are broadcasting a digital signal.

6. The noncommercial stations in this proceeding were required to construct their DTV facilities by May 1, 2003, and have been granted at least two extensions by the staff. Their current extension must be considered by the Commission.⁴

II. DISCUSSION

A. Stations Granted Six Month Extensions

7. *Stations with Uncontrollable or Unforeseeable Delays.* A number of stations have encountered unforeseen or uncontrollable delays concerning the construction of their DTV facilities including late delivery of equipment, unexpected equipment failures, natural disasters, and weather related delays.

8. KMEB-DT, Wailuku, Hawaii, and KHET-DT, Honolulu, Hawaii, cite to difficulties they have experienced trying to site a new tower on the island of Oahu. They cite to the fact that local ordinances have restricted their ability to construct a new tower structure. To overcome these problems, these stations have joined with other area broadcasters to form a limited liability company seeking to construct a single tower to house their collocated DTV facilities. The group has located a common transmitter site, negotiated its organizational documents, and is continuing to work to obtain federal and local governmental approval for its proposed site.

9. KOAB-DT, Bend, Oregon, has experienced difficulties obtaining local approval for its proposed DTV facilities. The station only recently received the necessary local approvals and is currently involved in the appeals process. Once the appeal process is successfully completed, the station states that

⁴ See 47 C.F.R. § 73.624(d)(3)(iii).

it will begin construction of its DTV facilities. In the interim, the station has purchased and installed its transmitter and has undertaken modifications to its transmitter building.

10. KRMJ-DT, Grand Junction, Colorado, did not receive a grant of a necessary application for modification of construction permit until May 2004. Following that action, the station states that there was a heavy snowfall at its tower location that delayed construction of its DTV facilities. The station has commenced construction and has taken delivery of its DTV transmitter and antenna.

11. KGTF-DT, Agana, Guam, did not receive a grant of a necessary application for modification of construction permit until April 2004. Following that action, the station obtained CPB funding and purchased its DTV equipment. The station states that it will commence installation of the equipment upon receipt.

12. WMTJ-DT, Fajardo, Puerto Rico, and WIPM-DT, Mayaguez, Puerto Rico, are pursuing the construction of new tower structures in environmentally-sensitive areas. These stations are working to obtain the necessary approvals from local officials. In the interim, these stations have purchased their DTV equipment.

13. WQTO-DT, Ponce, Puerto Rico, has completed the installation of its DTV transmitter and antenna, but experienced a last-minute delay in completion of the station's master control system. The station had to order additional equipment and is awaiting its arrival.

14. WELU-DT, Aguadilla, Puerto Rico, did not receive a grant of a necessary application for modification of construction permit until March 2004. Since that action, the station has been seeking approval of its proposed tower site from local authorities. Approval has been delayed and the station has been unable to begin construction. In the interim, the station has ordered all of its equipment and it has been delivered.

15. KRSC-DT, Claremore, Oklahoma, began operating its DTV facilities, but experienced last-minute problems with certain of its DTV equipment. The station was forced to order replacement equipment and is awaiting its arrival so that it can once again begin operating digitally.

16. WLCB-DT, Leesburg, Florida, did not receive a grant of its DTV construction permit until November 2003. Since that time, the station has made progress on construction of its DTV facilities. Construction was delayed in the late summer and early fall of 2004 by the several hurricanes that hit the Florida area. The licensee of the station states that these hurricanes caused disruption of service to its other analog stations and diverted attention and resources from the WLCB-DT construction project. The station states that it has completed a lease for its tower site, purchased its equipment and is continuing to work with its tower company to complete construction of its collocated DTV facilities.

17. We recognize that the siting of DTV facilities remains a challenge for many broadcasters. Construction and tower siting delays of the type outlined above qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines.

18. *Stations Awaiting Commission Action.* The following stations only recently received a grant of a construction permit application, modification application, request for STA, or petition for rulemaking:

KAKM-DT, Anchorage, Alaska
KWSE-DT, Williston, North Dakota
WDPB-DT, Seaford, Delaware
WEDY-DT, New Haven, Connecticut
WEIU-DT, Charleston, Illinois
WIPB-DT, Muncie, Indiana
WPPB-DT, Boca Raton, Florida

19. We find that in each of the above cases the stations took the necessary steps to complete the processing of their proposal, but, because of their recent grant, the stations had insufficient time to complete construction.

20. *Financial Limitations.* Noncommercial educational stations face a unique challenge in the construction of their DTV facilities. Many of these stations have limited budgets and rely on state or federal funding for construction projects. Some must wait through lengthy budget cycles in order to secure the necessary financing in order to purchase and install equipment. These limitations provide additional obstacles and unique delays for successful DTV construction. In addition, in our *DTV MO&O*, we recognized that some stations may not be in the financial position to provide DTV service by their respective deadline.⁵ We announced a policy of allowing stations to seek an extension of their DTV construction deadline based upon the fact that the cost to construct their facility may exceed the station's financial resources. A number of stations have sought extensions based upon their financial difficulties.

21. KDIN-DT, Des Moines, Iowa, is licensed to a state-funded public broadcasting board that is the licensee of a state-wide system of television stations. The board is awaiting action from the State of Iowa on the final portion of the funding needed to complete construction of its DTV facilities. The station has already undertaken construction of some of its DTV facilities and has purchased some of its DTV equipment. The station expects to receive the remainder of its state funding and to complete its DTV construction.

22. KGFE-DT, Grand Forks, North Dakota, is also licensed to state-wide public broadcasting organization. The station has been unable to secure the funding necessary to complete construction of all of its DTV facilities. With an out-of-core DTV allotment (Channel 56), the station faces the difficult task of constructing a DTV facility that must later be modified to an in-core channel. The station is seeking different alternatives to construction of KGFE-DT's out-of-core DTV facilities, including allotment of alternative noncommercial educational DTV stations to cover the Grand Forks area.

23. KMTP-DT, San Francisco, California, was forced to pursue an alternative method of funding – a combination of funding from viewers, supporters and governmental agencies. That funding was not

⁵ See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, 16 FCC Rcd 20594, 20610-12 (2001) (*DTV MO&O*).

secured until April 2004. The station then ordered its DTV equipment and began construction of its DTV facilities.

24. WILL-DT, Urbana, Illinois, is licensed to the University of Illinois. The station experienced delays in completion of its DTV facilities due to what it describes as drastic staff and budget cuts in the University's Operations and Maintenance Division. Construction has once again commenced and the station expects to complete construction shortly.

25. WPBS-DT, Watertown, New York, and WNPI-DT, Norwood, New York, only recently received outside funding to purchase their DTV equipment. Additional funds are needed and the stations are working to obtain funding from the State of New York. These stations are currently working on reinforcing their tower structure.

26. State funding limits have prevented WSBE-DT, Providence, Rhode Island, licensed to the state public telecommunications authority, from completing construction of its DTV facilities. The station states that almost all of the major equipment for digital conversion have been delivered and installed. The station is awaiting state funding for its encoding equipment.

27. WLAE-DT, New Orleans, has also been unable to complete construction of its DTV facilities because its licensee must comply with state public bid laws in order to purchase equipment. The station states that this has delayed purchase of the station's DTV antenna and transmission line. Problems with the bid process caused certain bids to be thrown out and new bids were sought. The station states that the problems have been resolved and that it is in the process of purchasing the necessary equipment.

28. The South Carolina Educational Television Commission (SCETV) is the licensee of WEBA-DT, Allendale, South Carolina; WJWJ-DT, Beaufort, South Carolina; WNEH-DT, Greenwood, South Carolina; and WRET-DT, Spartanburg, South Carolina. SCETV has had to complete construction of eleven DTV facilities. To date, they have completed the DTV facilities of seven stations. SCETV continues to press forward with the construction of its remaining four stations. It has acquired some of the DTV equipment for these stations and has completed some construction of the proposed tower locations. In addition to state budget delays, SCETV has experienced construction and installation delays. SCETV continues to press forward and diligently construct its remaining DTV facilities.

29. Central Michigan University (CMU), the licensee of WCMU-DT, Mount Pleasant, Michigan; WCML-DT, Alpena, Michigan; WCMW-DT, Manistee, Michigan; and WCMV-DT, Cadillac, Michigan; has faced similar problems trying to complete construction of all of its stations' DTV facilities. These delays include attempts to comply with the University's purchasing policies. The station has also experienced construction delays at the stations' tower sites. Construction continues on each of the station's DTV facilities. Most of the DTV equipment has been obtained. In addition, CMU is seeking additional funding from federal sources to obtain the necessary money for the remaining portions of its conversion projects.

30. The Georgia Public Telecommunications Commission (GPTC) is the licensee of the following nine stations:

WABW-DT, Pelham, Georgia
WACS-DT, Dawson, Georgia
WCES-DT, Wrens, Georgia
WCLP-DT, Chatsworth, Georgia
WDCO-DT, Cochran, Georgia
WGTV-DT, Athens, Georgia
WJSP-DT, Columbus, Georgia
WVAN-DT, Savannah, Georgia
WXGA-DT, Waycross, Georgia

31. GPTC has experienced a delay in obtaining state funding for its DTV construction. It has been working with the state legislature to obtain authority to sell bonds for DTV construction. GPTC first obtained approval from the state to sell the bonds but the approval was later rescinded. GPTC is unable to move forward with construction until the funding issue has been resolved.

32. We find that these stations have met the requirements for further extension of the DTV construction deadline as stations experiencing financial delays and hardships. The stations have provided documentary evidence to establish that the “costs of meeting the minimum build-out requirements exceed the station’s financial resources.”⁶ Despite these setbacks, the stations have taken steps to further their DTV construction. Therefore, we grant these stations an extension to six months from the release date of this Order to complete their DTV facilities.

33. Although we grant these extension requests, we take this opportunity to remind television stations that timely implementation of DTV is the key to the success of a nationwide DTV system. We have found that expedited construction promotes DTV’s competitive strength internationally, as well as domestically. We have also determined that rapid build-out ensures that the recovery of broadcast spectrum for future uses occurs as quickly as possible. We continue to expect stations seeking extensions to submit detailed justifications as to why they have been unable to complete construction of their facilities. As before, each station will be required to demonstrate that its failure to construct has been due to financial hardship, or circumstances that were either unforeseeable or beyond its control and that the station has taken all reasonable steps to resolve the problem expeditiously. We continue to expect such requests to be supported by documentation, and for stations to be able to demonstrate each step that was taken to complete construction or to outline each unforeseeable or uncontrollable delay or event. Only when we receive a fully supported request, will we allow an additional extension of the construction period.

C. Stations Admonished For Failure To Timely Construct

34. In our *Remedial DTV R&O*, we announced a series of measures that we would employ whenever we determined that a television station had failed to complete construction of its DTV facilities

⁶ *Id.*

and had failed to adequately justify an extension of its DTV construction permit.⁷ Upon examination of their extension applications, we have determined that 2 stations have not justified their failure to complete construction of their DTV facilities.

35. WYDN-DT, Worcester, Massachusetts, and KWDC-DT, Tacoma, Washington, claimed that they were unable to complete construction because of delays by a third-party installation company. These stations, however, failed to explain why they did not take steps to expedite construction or to force the installation company to timely complete their DTV facilities. As required by our rules, these stations failed to adequately demonstrate that their inability to complete construction of their DTV facilities in a timely fashion was due to circumstances that were unforeseeable or beyond their control. These stations also did not adequately address whether they had taken all necessary steps to further their DTV construction.

36. We, therefore, deny these stations' requests for an unqualified extension and admonish them for their continuing failure to comply with their DTV construction obligation. These stations are provided six months to comply with the DTV construction rule. These stations must submit a report (in letter form with the Secretary's office), within thirty days of the release date of this Order, outlining the steps they intend to take to complete construction and the approximate date that they expect to reach each of these construction milestones. Sixty days after the initial report, these stations must submit a report (once again in letter form with the Secretary's office), detailing their progress on meeting their proposed construction milestones and justifying any delays they may have encountered. If at any time during this six-month period, these stations fail to comply with the reporting requirements or fail to demonstrate that they are taking all reasonable steps to complete construction, or we otherwise find that these stations have acted in bad faith, we will consider the imposition of additional sanctions.

37. These stations should understand that, as a result of being placed in the remedial program, the burden will be greater to demonstrate the propriety of any failure to complete its DTV construction. If at the end of the six-month period, these stations have not completed construction, we will issue a Notice of Apparent Liability unless these stations can demonstrate that their inability to complete construction was due to extraordinary and compelling circumstances, such as a new, unanticipated, intervening event. These stations will be required to fully detail and document the delays they have experienced and must show that they took every reasonable step to prevent such delays.

III. CONCLUSION

38. ACCORDINGLY, IT IS ORDERED That, pursuant to Section 73.624(d)(3)(iii) of the Commission's Rules, 47 C.F.R. § 73.624(d)(3)(iii), the applications of the television stations set forth in Appendix A of this Order for extension of the digital television construction deadline ARE GRANTED and the digital television construction deadline IS EXTENDED to six months from the release date of this Order.

39. IT IS FURTHER ORDERED, That the television stations set forth in Appendix B of this Order ARE ADMONISHED for their continuing failure to comply with its DTV construction obligation, that their application for extension of its DTV construction deadline ARE DENIED, and that these stations ARE AFFORDED until six months from the release date of this Order to come into compliance with the

⁷ See *DTV Remedial R&O*, *supra*.

Commission's DTV construction rule. These stations must submit a report (in letter form with the Secretary's office), within thirty days of the release date of this Order, outlining the steps they intend to take to complete construction and the approximate date that they expect to reach each of these construction milestones. Sixty days after the initial report, these stations must submit a report (once again in letter form with the Secretary's office), detailing their progress on meeting their proposed construction milestones and justifying any delays they have encountered.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Stations Granted Sixth-Month Extension

CALL	FAC ID	FILE NUMBER	CH	CITY	ST
KAKM-DT	804	BEPEDT-20040528ABE	24	ANCHORAGE	AK
KDIN-DT	29102	BEPEDT-20040412ABA	50	DES MOINES	IA
KGFE-DT	53320	BEPEDT-20040803ABO	56	GRAND FORKS	ND
KGTF-DT	25511	BEPEDT-20040618AAU	5	AGANA	GU
KHET-DT	26431	BEPEDT-20040428AAM	18	HONOLULU	HI
KMEB-DT	26428	BEPEDT-20040428AAL	30	WAILUKU	HI
KMTP-DT	43095	BEPEDT-20040616AAG	33	SAN FRANCISCO	CA
KOAB-DT	50588	BEPEDT-20040409ABL	11	BEND	OR
KRMJ-DT	14042	BEPEDT-20040608AAL	17	GRAND JUNCTION	CO
KRSC-DT	57431	BEPEDT-20040610AAM	36	CLAREMORE	OK
KSWE-DT	53318	BEPEDT-20040412ACW	51	WILLISTON	ND
WABW-DT	23917	BEPEDT-20040603ABE	5	PELHAM	GA
WACS-DT	23930	BEPEDT-20040603ABF	8	DAWSON	GA
WCES-DT	23937	BEPEDT-20040603ABH	2	WRENS	GA
WCLP-DT	23942	BEPEDT-20040603ABI	33	CHATSWORTH	GA
WCML-DT	9917	BEPEDT-20040528ADQ	57	ALPENA	MI
WCMU-DT	9908	BEPEDT-20040528ADP	56	MOUNT PLEASANT	MI
WCMV-DT	9922	BEPEDT-20040528ADO	17	CADILLAC	MI
WCMW-DT	9913	BEPEDT-20040528ADN	58	MANISTEE	MI
WDCO-DT	23935	BEPEDT-20040603ABJ	7	COCHRAN	GA
WDPB-DT	72335	BEPEDT-20040604ABJ	44	SEAFORD	DE
WEBA-DT	61003	BEPEDT-20040601BGK	33	ALLENDALE	SC
WEDY-DT	13595	BEPEDT-20040604ABH	39	NEW HAVEN	CT
WEIU-DT	18301	BEPEDT-20040621ACP	50	CHARLESTON	IL
WELU-DT	26602	BEPEDT-20040903ABH	34	AGUADILLA	PR
WGTU-DT	23948	BEPEDT-20040603ABK	12	ATHENS	GA
WILL-DT	68939	BEPEDT-20040726ACL	9	URBANA	IL
WIPB-DT	3646	BEPEDT-20040804AFO	52	MUNCIE	IN
WIPM-DT	53863	BEPEDT-20040712AAA	35	MAYAGUEZ	PR
WJSP-DT	23918	BEPEDT-20040603ABM	23	COLUMBUS	GA
WJWJ-DT	61007	BEPEDT-20040601BGL	44	BEAUFORT	SC
WLAE-DT	18819	BEPEDT-20040629AAP	31	NEW ORLEANS	LA
WLCB-DT	9881	BEPEDT-20040603ACD	46	LEESBURG	FL
WMTJ-DT	2174	BEPEDT-20040804AAK	16	FAJARDO	PR
WNEH-DT	60931	BEPEDT-20040601BGH	18	GREENWOOD	SC
WNPE-DT	62137	BEPEDT-20040804AAP	23	NORWOOD	NY
WPBS-DT	62136	BEPEDT-20040804AAQ	41	WATERTOWN	NY
WPPB-DT	51349	BEPEDT-20040910AAQ	44	BOCA RATON	FL
WQTO-DT	2175	BEPEDT-20040803ABM	25	PONCE	PR
WRET-DT	61011	BEPEDT-20040601BGP	43	SPARTANBURG	SC
WSBE-DT	56092	BEPEDT-20040628AAD	21	PROVIDENCE	RI
WVAX-DT	23947	BEPEDT-20040603ABN	13	SAVANNAH	GA
WXGA-DT	23929	BEPEDT-20040813AAE	9	WAYCROSS	GA

APPENDIX B
Stations Admonished For Failure To Timely Construct

CALL	FAC ID	FILE NUMBER	CH	CITY	ST
KWDK-DT	35419	BEPEDT-20040709ACU	42	TACOMA	WA
WYDN-DT	18783	BEPEDT-20040709ACW	47	WORCESTER	MA